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COURT OF APPEALS

DIVISION TWO

OF THE STATE OF WASHINGTON

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY C DEPUTY

STATE OF WASHINGTON)

RESPONDENT,)

V.)

JOSHUA RAY PHILLIPS)

APPELLANT.)

NO.41393-1-II

STATEMENT OF ADDITIONAL

GROUNDS FOR REVIEW

I, Joshua Ray Phillips, have recieved and reviewd the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief.I understand the Court will review this Statement Of Additional Grounds for Review when my appeal is considered on the merits.

ADDITIONAL GROUND 1

In the case at bar, the Court had clearly instructed baliff to send jury home for the day, to return the following morning and continue deliberations (RP 1292). However, while the Judge, Prosecutor, and Defense counsel left to go to their respective homes... the jury clearly failed to follow the Courts order to go home for the day.A significant time later, the Judge,Prosecutor, and Defense attorney were called and told to come back to the Hall Of Justice, because the jury had reached a verdict.(RP 1292). The jurys failure to follow the Courts order to go home for the day deprived the defendant of his right to be represented in all stages of proceedings,(Criminal Law 1166.11, 1166.14).It violated the defendants right to attend all stages of trial, from jury impanelment to delivery of verdict,(Diaz V. U.S., 223 U.S. 442,454-455 (1912). The accused was denied the right to a public trial, 6th Ammendment U.S. Constitution;Article 1,Section 22 Washington Constitution,"Justice in all cases shall be administered openly", Article 1,Section 10 Washington Constitution. Finally, while the jury is absent, the Court may adjourn from time to time,in respect to other buisness, but it is nevertheless to be deemed open for every purpose connected to the jury, until a verdict is rendered or the jury is discharged. Beyond the jurys disregard for the

the Courts order to go home for the night, their failure to follow that order calls into question their ability to follow other instructions from the Court.

ADDITIONAL GROUND 2

At (RP 1180-1181) Defense objected to Courts failure to give a Missing Witness Jury Instruction, concerning Detective Dawn Taylor and Captain Jacobs. The agency with which Detective Taylor was connected was responsible for the gathering of evidence in this case. She worked so closely with Prosecutors Office as to indicate a community of interest, which Defense Attorney Blair lacked as a contracted public defender from a different county. Testimony from Detective Taylor would not have been trivial or cumulative for purposes of the Missing Witness rule. Detective Langlois, testified that though he and Detective Taylor went together to the defendants house to interview defendants room mates, that his investigation was independent of Detective Taylors. It is likely Detective Taylors testimony would have conflicted with testimony from Detective Langlois, concerning his lack of knowledge to the FERRIER warning search form, the actual search of the residence, and his knowledge of the interview she conducted on Mr. DeJESUS, (Davis ,73 Wn.2d 271, 438 P.2d 185 (1968)). It is said that when the missing witness rule is applicable, that the jury should be instructed that they may draw an unfavorable inference against the party failing to call the missing witness.

ADDITIONAL GROUND 3

In the case at bar, the application to intercept and record conversations relies on boilerplate justifications. Defense argument to suppress at (RP 279-284) should have been granted for reasons set forth in that argument, (RCW 9.73.130(3)(f).

ADDITIONAL GROUND 4

It was determined during Motions In Limine that no In Court Identification

would be done, because witnesses only recognized Defendant from a newspaper article with his picture, and not from the crimes alledged. At (RP 884-891) prosecutions improper line of questioning produced a Motion In Limine violation of no in court identifications, and caused an unforgettable prejudice toward Defendant. Defense contends that our motion for Mis Trial should have been granted, Because the suggestiveness likely resulted in a substantial liklihood of misidentification, and was cemented in the minds of jurrors, (Simmons V. U.S., 390 U.S. 384, 19 L.ED.2d 1247, 88 S.Ct. 967(1968)).

ADDITIONAL GROUND 5

At (RP 1183-1185), Defense objected to the prosecutions using a reproduction of the transcript of the original wire recording. The transcript was only to be used as a listening aid (RP 604 and RP 609). The playing of the original wire recording is found at (RP 708-724). The prosecutor read his inaccurate transcript power point presentation at (RP 1218-1221). Reading the two side by side, you can see his rendition was very inaccurate, contributing statements to defendant not even heard in the recording. It was an abuse of discretion for prosecutor to use his rendition of transcripts without proof of their accuracy, (Cummings, 93 Wn.2d 823, 613 P.2d 1139). In order to properly authenticate power point transcript presentation for introduction during trial, proponent must show...that audio and visual potions of recordings are authentic and accurate; that no changes, additions, or deletions had been made, (Criminal Rule 30 (b)4; U.S.C.A. Constitution Amendment 6; Hewett, 86 Wa.2d.487, 545 P.2d 1201.

ADDITIONAL GROUND 6

On numerous occasions the Court allowed prosecution to ask questions beyond cross examination (RP 756-757); or beyond scope of direct examination in the expediency or interest of time (RP 1064 and RP 1069).

Allowing these questions and answers was manifestly unreasonable and based on untenable reasoning, (Montgomery, 163 Wn.2d 577, 183 P3d 267). The answers at (RP1065) about Defendant doing tattoos, were clearly prejudicial in that it improperly bolsterd States theory. Defense

maintains it was prejudicial error to allow improper questioning, and there is a substantial likelihood the misconduct affected the jury's verdict, (Stenson, 132 Wn.2d 719, 940 P.2d 1239; Brett, 126 Wn.2d 175, 892 P.2d 29).

ADDITIONAL GROUND 7

At (RP 1085) Defense motion to dismiss do to lack of prima facie case, as to Count 1 (Solicitation To Commit Murder), should have been granted. (RCW 9A.28.030(1) requires that the solicitation occurs, i.e. that a person offers money or something of value to another person to commit a crime. As seen in the wire recording at (RP 708-724), at no time did accused solicit or offer money or something of value to Glen Jordan III. What we do hear in the recording is Mr. Glen Jordan leading the conversation and luring the accused to commit a crime he had no intention of committing. Solicitation to commit murder is an anticipatory offense that requires proof of a persons "intent to promote or facilitate" a crime (Varnell, 162 Wn.2d 1065, 1069 170 P.3d 24 (2007)).

ADDITIONAL GROUND 8

It was improper for the prosecutor to vouch for the credibility of Glen Jordan III, at (RP 1214); and it was improper for the prosecutor to vouch for the credibility of the investigation itself, at (RP 1269), (Sargent, 40 Wn.App. 340, 344, 698 P.2d 598).

ADDITIONAL GROUND 9

At (RP 421-423) Defense argued against admission of Levi Hunt's 911 call. The caller clearly stated "it was not a big emergency", and that he had spoken to an officer on the day before he called 911. His call was not an "excited utterance" as a natural declaration or statement growing out of the event, it was a mere narrative of a past completed affair, (Beck V. Dye,

200 Wash. App.1, 92 P.2d 113 (1939)). Furthermore the conversation with police operator was a private communication within RCW 9.73.030(1).

ADDITIONAL GROUND 10

~~The loss of~~ Defendant's right to presumption of innocence, which includes the right to be brought before the court with the appearance, dignity, and self respect of a free and innocent man, (Kennedy, 487 F.2d 104; Samuel, 431 F.2d 614; Eddy V. People, 115 Colo. 488, 492, 174 P.2d 717 (1946)). The presumption of innocence was broken when a correctional officer's radio broadcasted jail communications at (RP 379). The COURT admonished officers and instructed them to pass along the order to other officers to turn their radios off at (RP 420). Once again at (RP 763) a correctional officers radio broadcasted jail communications during trial. In case at bar radio communications during trial prejudiced defendant in front of Jury, in showing custody officers weren't bailiffs but in fact guarding accused. Inferring defendant was a violent person disposed to crimes of the type alledged, and in need of guarding, (People V. Duran, 16 Cal. 3d 282, 290, 545 P.2d 1322, 127 Cal. Rptr.618, 90 A.L.R. 3D 1 (1976)).

DATE: 9/5/2011

Signature: Joshua Ray Phillips

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In The Court of Appeals of The State of Washington
Division II

State of Washington,
Respondent.

vs.

Joshua Ray Phillips,
Appellant.

NO. 08-1-01255-4

Court of Appeals NO.

41393-1-II

Affirmation of Service

I, Joshua R. Phillips, states under penalty of perjury under the laws of Washington State; that on September 5, 2011; I personally placed in the institutional mail box the following documents;

- 1). Statement of Additional Grounds,
 - 2). Affirmation of Service,
- to the following:

Court of Appeals Division II
950 Broadway, Suite 300
Tacoma, WA. 98402-4454

John A. Hays
1402 Broadway
Longview, WA. 98632

Dated this 5th day of September, 2011 at Walla Walla
State Penitentiary, Washington.

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